

04.11.2022

WPST 88 of 2022

Court : 04
Item : 22
Matter : WPST
Status : DWC
Transcriber : nandy

The State of West Bengal & Ors.
Vs.
Dr. Brojen Choudhury

Mr. Anirban Ray, Learned Government Pleader
Ms. Chaitali Bhattacharya, Advocate
Mr. Kartick Chandra Kapas, Advocate
.....for the Petitioners/State
Mr. D.N. Ray, Advocate
Mr. Biswarup Nandy, Advocate
.....for the Respondent

The belligerent litigant approached the Court challenging the order of the West Bengal State Administrative Tribunal in OA 198 of 2021 passed on 06.08.2021 whereby and whereunder the tribunal application was disposed of directing the concerned State Authorities to issue a release order upon acceptance of the letter of resignation as such action being arbitrary and contrary to the relevant Rules and filed the instant writ-petition on the premise that the State cannot be forced to release the employee as the relevant Institution is suffering from dearth of specialized Doctors, more particularly, when the pandemic struck globally. Further plea was taken relating to the formalities required under the relevant Rules having not strictly followed despite the fact that there has been a considerable delay in taking a decision on the letter of resignation. The shelter appears to have been taken under Rule 34A of Chapter II of the West Bengal Service Rules, Part-I which deals with the resignation tendered by the employee. It would be relevant and profitable to quote the provisions contained in the said Rules which runs thus:-

“34.(1) Unless the Governor, in view of the exceptional circumstances of the case, otherwise determines, no Government employee shall be granted leave of any kind for a continuous period exceeding five years.

(2) Unless the authority competent to grant leave extends the leave, a Government employee who remains absent even after the expiry of leave previously granted is not entitled to any leave salary for the period of such absence and that period shall be debited against his leave account as though it were half-pay leave, to the extent such leave is due, the period in excess of such half-pay leave due being treated as extraordinary leave. Maximum period of continuous absence from duty-. Compendium on Acts and Rules 25

(3) Willful absence from duty after expiry of the leave renders a Government employee liable to disciplinary action.

Note 1.—Treatment of willful absence from duty.—Willful absence from duty though not covered by leave does not entail loss of lien. The period of absence not covered by grant of leave shall have to be treated as 'dies non' for all purposes, viz., leave, increment and pension. Such absence without leave where it stands singly and not in continuation of any authorised leave of absence will constitute an interruption of service for the purpose of pension and unless pension sanctioning authority exercises his power under rule; 35 of West Bengal Services (Death-6umRetirement Benefit) Rules, 1971 to treat the period as leave without pay, the entire past service stands forfeited.

Note 2.—Action for unauthorised absence from duty for over stayal of leave—

- (i) When a temporary Government employee asks for leave in excess of the limits prescribed in clause (b) of the proviso to sub-rule (2) of rule 175 and if the circumstances are exceptional the leave sanctioning authorities shall take decision in consultation with the Finance Department as to whether further leave in excess of the limit shall be allowed.*
- (ii) (ii) When a Government employee applies for leave beyond that prescribed limit of extraordinary leave and the leave sanctioning authority is not satisfied with the genuineness of the grounds on which further leave has been asked for, nor does it consider the ground as exceptional, the leave cannot 'be granted. In such a case the Government employee shall be asked to rejoin duty within a specified date failing which he would render himself liable to disciplinary action. Disobedience of orders to rejoin duty with- in the specified period would afford good*

and sufficient reasons for initiating disciplinary action under the West Bengal Services (Classification, Control and Appeal) Rules, 1971. If he rejoins duty by the stipulated date he may be taken back in service and the period of absence not covered by leave would be treated as overstayal and such over-stayal shall be regularized in accordance with the provisions of this rule. If the Government employee does not join duty by the stipulated date, it would be open to the disciplinary authority to institute disciplinary action against him. If during the course of the disciplinary proceedings he comes for rejoining duty he shall be allowed to do so without prejudice to the disciplinary action already initiated against him (unless he is placed under suspension) and the disciplinary action concluded as quickly as possible. The question of regularization of the period of overstayal of leave shall be left over for consideration till the finalization of the disciplinary proceedings.

- (iii) *If a Government employ absents himself abruptly or applies for leave which is refused in the exigencies of public service and still happens to absent himself from duty he shall be told of the consequences, viz., that the entire period of Compendium on Acts and Rules 26 absence shall be treated as unauthorised absence entailing loss of pay for the period in question under the proviso to rule 26, thereby resulting in break in service. If, however he reports for duty before or after initiation of disciplinary proceedings, he may be taken back for duty because he was not placed under suspension. The disciplinary action may be concluded and the 'period of absence treated as unauthorized absence resulting in loss of pay and allowances under the proviso to rule 26 and thus a break in service. The question whether the break should be condoned or not and treated as 'dies non' shall be considered only after conclusion of the disciplinary proceedings and that too after the Government employee represents in this regard.*
- (iv) *A Government employee who remains absent unauthorisedly without proper permission shall be proceeded*

against immediately and such disciplinary action shall not be put off till the absence exceeds the limit prescribed in rule 175. Considering the grounds adduced by the Government employee for his unauthorised absence before initiating the disciplinary proceedings, if the disciplinary authority is satisfied that the grounds adduced for unauthorised absence are justified, the leave of the kind applied for and due and admissible may be granted to him.”

The meaningful reading of the aforesaid provision would evince that the Government employee shall not be permitted to resign if he fails to serve on his appointing authority a notice for a particular period, the eventualities would be followed as indicated therein. It would further be manifest from the aforesaid provisions that the Government employee who tenders resignation and quits without giving notice, shall be liable to forfeiture of his salary for the period for which the notice falls short of the requirement depending upon the discretion of the appointing authority. What would be apparent from the aforesaid provision that the Government employee who intend to resign from the service has to give a due notice, “different periods have been provided for the eventualities contemplated in Clause (A) & (B) of Rule 34A(I) of the said Service Rules.” In the event, the notice falls short of the period contemplated therein, the discretion is vested upon the appointing authority to forfeit the salary admissible for the notice period. There is no provision contained in the aforesaid Rules which permeate into the appointing authority to reject the letter of resignation or to withhold the intention, nor the authority is clothed with any such power to compel the employee to remain in service endlessly or in perpetuity.

Admittedly the letter of resignation was issued on the appointing authority. Even though the said letter falls short

of the requisite period required therefor, the contingencies have been taken care of in the aforesaid Rules permitting the appointing authority to withhold the salary for the notice period. Even apart, at the time when the said letter of resignation was placed before the appointing authority to take a decision thereupon, the statutory period of such notice already elapsed and it is nobody's case that the said Government employee did not rendered services during the notice period. It is open to the appointing authority to withhold the salary for the rest of the period provided for such notice.

It is brought to our notice that the said Government employee has given an undertaking to reimburse any excess amount paid for which he is not entitled to.

Be that as it may, the identical issues arose before the Division Bench of this Court in the case of ***Dr. Debangshu Ghosh Vs. The State of West Bengal & Ors.*** ***passed*** in ***WPST 86 of 2020*** decided on 18.12.2020 where the coordinate Bench held:-

"In the light of the admitted position, the respondent authorities are directed to issue the letter of release to the petitioner as expeditiously as possible and, preferably, by December 22, 2020. In any event, the petitioner will be entitled to rely on this order as the deemed letter of release for the petitioner to apply for or take up any other post that the petitioner intends to."

Indubitably, the said Government employee neither claimed any lien nor claimed any benefit for his services so rendered and, therefore, it is not within the contour of powers vested upon the appointing authority to reject the letter of resignation and compel such employee to continue in service. The said order was challenged before the Supreme Court by the State of West Bengal in Special

Leave to Appeal (Civil) 5327-5328 of 2016. The said SLP was dismissed on February 23, 2016 as the State undertook to release the said employee within 48 hours. Even after noticing the aforesaid stand of the State that in view of such undertaking has been given by the State Government, the High Court may pass an appropriate order in the contempt proceeding, referred to above; the said order which was passed more than five years ago and operates in the field, time and again being attempted to be thwart at the behest of the State through its instrumentalities.

The ratio *decidendi* culled out from the aforesaid decision is that the State cannot reject the resignation tendered by the Government employee even if the period falls short of the period provided therein nor can compel such Government employee to remain in service endless or in perpetuity. Such being the ratio of the aforesaid decision having passed in the proceeding in which the State of West Bengal was a party, it is a matter of deep concern that the State continue to take the point, which was negatived in the said judgment, endlessly in all subsequent proceedings. The certainty in law is the virtue. Any attempt to thwart the ratio of the judgment laid down in the above report at the behest of the State cannot be countenanced nor encouraged. It is ardent duty of the State to see that the heap of the litigations resulting into a docket explosion is minimized by the prompt steps to be taken and avoidance to any unnecessary adjournment and/or inviting the litigants to be guarded against.

We have noticed in several cases that insistence came from the Officer despite correct and appropriate advice being given on the nuances of law and, therefore, it

is the high time that a strong message must be percolated into the minds of the officers that insurances in such frivolous litigation not only consumed precious time of the Courts but augments unnecessary arguments to be advanced resulting into wastage of time.

In view of the law having laid down in the aforesaid noted judgment, we do not find any infirmity and/or illegality in the order of the Tribunal.

However, in view of the observations made here-in-above, we feel that it is a fit case where the costs should be imposed on the petitioner and, therefore, the writ-petition being **WPST 88 of 2022** is **dismissed** with the costs of Rs.50,000/- to be deposited with District Legal Services Authority within two weeks from date, who shall deposit the same in an account earmarked for juvenile.

Since the State has to bear the burden of the payment of such costs, it is open to fix the responsibility on an officer and may realize the said amount from his salary or the other emoluments.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

